

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----X  
**JESUS VARGAS,**

**Plaintiff,**

**- against -**

**LEONARDO RODRIGUEZ  
and FEDERAL EXPRESS CORP.,**

**Defendants.**  
-----X

**07 Civ. 2911 (PAC) (AJP)**

**AFFIDAVIT OF  
LLOYD A. KATZ**

**STATE OF NEW YORK :)  
COUNTY OF NEW YORK :)**

**LLOYD A. KATZ, being duly sworn, deposes and says:**

- 1. I am an attorney with CARLOS & KATZ, ESQS., attorneys for the plaintiffs, JESUS VARGAS, and as such am fully familiar with all the facts and circumstances set forth herein.**
- 2. This affidavit is submitted in support of the within motion requesting an order directing that the Court remand the entire action back to the State Supreme Court, Bronx County, on the grounds that together with such other and further relief as to this Court may deem just, proper and equitable.**
- 3. The basis of this application is the apparent un-timeliness of the Notice of Removal dated April 11, 2007.**
- 4. The within action arises from an incident occurring on October 23, 2003 when the plaintiff, JESUS VARGAS, a pedestrian, alleges to have sustained personal injuries when was struck by a vehicle owned by the defendant, FEDERAL EXPRESS CORP. and operated by the defendant LEONARDO RODRIGUEZ on Hunts Point Avenue at or near the intersection of Garrison Street, Bronx, New York.**
- 5. A copy of what appears to be the police report for the subject incident is attached hereto as Exhibit "A". It indicates the home address of the defendant, LEONARDO RODRIGUEZ, as 414 East 204<sup>th</sup> Street, Apt. 9J, Bronx, New York.**
- 6. A summons and verified complaint, attached as Exhibit "A" to the Affidavit of Mr. Eckert dated May 16<sup>th</sup>, 2007 in support of defendants opposition to the instant application to remand, lists plaintiff's home address that is indicated on the aforesaid police report on the face of the summons.**
- 7. Paragraph "3" of the aforesaid complaint states that "Plaintiff was and still is a resident of the Bronx".**
- 8. Subsequently, your deponent's office received and answer on behalf of the defendant.**

Annexed as Exhibit "B" to the Affidavit of Mr. Eckert dated May 16<sup>th</sup>, 2007 in support of defendants opposition to the instant application to remand, is a copy of the answer submitted on behalf of the defendants, **FEDERAL EXPRESS CORP. and LEONARDO RODRIGUEZ.**

9. The aforesaid Answer is dated January 31, 2007 and according to the date stamp thereon was filed with the Clerk of Bronx County on February 1, 2007.
10. Mr. Eckert states on page 2, paragraph 4 of his Affidavit dated May 16, 2007 that "Apparently, plaintiff did not confirm whether defendant RODRIGUEZ was still residing in the Bronx".
11. Apparently, neither did the attorney for Mr. Rodriguez.
12. Certainly by the time the Answer was interposed on January 31, 2007 counsel should have been cognizant of his client's place of citizenship, particularly where defendants shared a prior relationship as employer and employee and defendants were represented by same attorney.
13. It is respectfully submitted that the Notice of Removal is late pursuant to the provisions contained in 28 U.S.C.A. 1446 in that it had to be filed within 30 days of the completion of service which would appear to have been upon the filing of the affidavits of service on the defendants with the office of the County Clerk, Bronx County on December 20, 2006.
14. The Affidavit of the defendant, LEONARDO RODRIGUEZ, is silent as to when he purportedly moved from the address listed on the police report, other than he no longer lived there at the time of the purported service.
15. Attached hereto as Exhibit "B" is a copy of what is delineated thereon as "RECORD EXPANSION FOR RODRIGUEZ, LEONARDO" dated April 25, 2007, which lists his home address as the address on the police report.
16. It is also respectfully submitted that the Court should be then be remanded to the State Supreme Court, Bronx County for disposition.

**WHEREFORE**, it is respectfully requested that the instant motion be granted, remanding the present action back to Supreme Court of the State of New York, County of Bronx, under Index number 22230/06 for disposition, together with such other and further relief as this Court may deem just, proper and equitable.

  
**LLOYD A. KATZ**

Sworn to before me this  
25th day of May, 2007

  
Notary Public

JORDAN SCHIFF  
Notary Public, State Of New York  
No. 02SC5082029  
Qualified In New York County  
Commission Expires 7/14/2007



**Exhibit A**

# ORIGINAL

☐ **AMENDED REPORT**

11-7-03

Accident Date			Day of Week		Military Time		No. of Vehicles		No. Injured		No. Killed		Not Investigated at Scene		Left Scene		Police Photos																		
Month	Day	Year																																	
10	23	2003	THUR		1847		1		1		<input checked="" type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>																		
VEHICLE 1																		VEHICLE 2		<input checked="" type="checkbox"/> BICYCLIST <input checked="" type="checkbox"/> PEDESTRIAN <input type="checkbox"/> OTHER PEDESTRIAN															
VEHICLE 1 - Driver License ID Number 230 374 123 State of Lic. NY																		VEHICLE 2 - Driver License ID Number State of Lic. NY																	
Driver Name - exactly as printed on license RODRIGUEZ, LEONARDO																		Driver Name - exactly as printed on license VARGAS, JESUS																	
Address (Include Number & Street) 414 E 24TH STREET APT. NO. 95																		Address (Include Number & Street) 854 HUNTS POINT APT. NO. 2D																	
City or Town BRONX State NY Zip Code 10467																		City or Town BRONX State NY Zip Code																	
Date of Birth Month 1 Day 1 Year 01 Sex M Unlicensed <input type="checkbox"/> No. of Occupants 1 Public Property Damaged <input type="checkbox"/>																		Date of Birth Month 1 Day 1 Year 01 Sex M Unlicensed <input type="checkbox"/> No. of Occupants 1 Public Property Damaged <input type="checkbox"/>																	
Name - exactly as printed on registration FEDERAL EXPRESS CORP Sex - Date of Birth Month Day Year																		Name - exactly as printed on registration Sex - Date of Birth Month Day Year																	
Address (Include Number & Street) 900 MIDLAND AVE DR APT. NO. Haz. Mat. Code Released																		Address (Include Number & Street) APT. NO. Haz. Mat. Code Released																	
City or Town MOUNT LAUREL State NJ Zip Code 08054																		City or Town State Zip Code																	
Plate Number 1B291AB State of Reg. NY Vehicle Year & Make 1995 Ford Vehicle Type COM Ins. Code 487																		Plate Number State of Reg. Vehicle Year & Make Vehicle Type Ins. Code																	
Ticket/Arrest Number(s)																		Ticket/Arrest Number(s)																	
Violation Section(s)																		Violation Section(s)																	
Check if involved vehicle is: <input type="checkbox"/> more than 95 inches wide; <input type="checkbox"/> more than 34 feet long; <input type="checkbox"/> operated with an overweight permit; <input type="checkbox"/> operated with an overdimension permit.																		Check if involved vehicle is: <input type="checkbox"/> more than 95 inches wide; <input type="checkbox"/> more than 34 feet long; <input type="checkbox"/> operated with an overweight permit; <input type="checkbox"/> operated with an overdimension permit.																	
VEHICLE 1 DAMAGE CODES																		VEHICLE 2 DAMAGE CODES																	
Box 1 - Point of Impact Box 2 - Most Damage Enter up to three more Damage Codes																		Box 1 - Point of Impact Box 2 - Most Damage Enter up to three more Damage Codes																	
Vehicle Towed: By MA To																		Vehicle Towed: By MA To																	
VEHICLE DAMAGE CODING: 1-13. SEE DIAGRAM ON RIGHT. 14. UNDERCARRIAGE 17. DEMOLISHED 15. TRAILER 18. NO DAMAGE 16. OVERTURNED 19. OTHER																		Circled diagram below that describes the accident, or draw your own diagram in space #9. Number the vehicles. Rear End Left Turn Right Angle Right Turn Head On Overtaking Left Turn ACCIDENT DIAGRAM #4																	
Reference Marker Coordinates (if available) Latitude/Northing: Longitude/Easting:																		Place Where Accident Occurred: <input checked="" type="checkbox"/> BRONX <input type="checkbox"/> KINGS <input type="checkbox"/> NEW YORK <input type="checkbox"/> QUEENS <input type="checkbox"/> RICHMOND Road on which accident occurred HUNTS POINT at 1) intersecting street GARRISON (Route Number or Street Name) or 2) of (Route Number or Street Name) Feet Miles (Milepost, Nearest Intersecting Route Number or Street Name)																	
Accident Description/Officer's Notes AT T1010 VEH 1 STATES HE WAS ON A RED LIGHT ON HUNTS POINT FACING E/B WHEN THE LIGHT TURN GREEN HE STATES THE PEDESTRIAN WALKED IN FRONT OF THE TRUCK. PEDESTRIAN STATES HE HAD THE WALK SIGNAL WHEN HE STATES THE FORD EX STRUCK HIM. PEDESTRIAN IS APPARENTLY FATAL.																																			
A 1 1 2 1 22 M 15 16 17 BY TO 18 Names of all involved Date of Death Only																		B P 33 M 11 12 6 0561 7010 RODRIGUEZ, LEONARDO VARGAS, JESUS																	

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 05/29/2007 BY 60322 UCBAW

Enter designation of persons killed or injured must correspond with letter designation on front).

JAVIERO		M.I.	D Last Name	First	M.I.
Address		Address			
Date of Birth Month Day Year	Telephone (Area Code)	Date of Birth Month Day Year	Telephone (Area Code)		
First	M.I.	E Last Name	First	M.I.	
Address		Address			
Date of Birth Month Day Year	Telephone (Area Code)	Date of Birth Month Day Year	Telephone (Area Code)		
First	M.I.	Highway Dist. at Scene? <input type="checkbox"/> Yes <input type="checkbox"/> No			
Address		Name:			
Date of Birth Month Day Year	Telephone (Area Code)	Shield No.			

ENTER INSURANCE POLICY NUMBER FROM INSURANCE IDENTIFICATION CARD, EXPIRATION DATE (IN ALL CASES), AND VIN.

Vehicle No. 1 15A-H07934105 Vehicle No.2 \_\_\_\_\_

Expiration Date 10/1/04 Expiration Date \_\_\_\_\_

N N/A VIN \_\_\_\_\_

## FITNESS (Attach separate sheet, if necessary)

Name	Address	Phone

## DUPLICATE COPY REQUIRED FOR:

<input type="checkbox"/> Dept. of Motor Vehicles (if anyone is killed/injured)	<input type="checkbox"/> Motor Transport Division (P.D. vehicle involved)	<input type="checkbox"/> NYC Taxi & Limousine Comm. (if a Licensed taxi or limousine involved)	<input type="checkbox"/> Other City Agency (Specify)
<input type="checkbox"/> Office of Comptroller (if a City vehicle involved)	<input type="checkbox"/> Personnel Safety Unit (if a P.D. vehicle involved)	<input type="checkbox"/> Highway Unit	

NOTIFICATIONS: (Enter name, address, and relationship of friend or relative notified. If aided person is unidentified, list Missing Person Squad member who as notified. In either case, give date and time of notification.)

PROPERTY DAMAGED (other than vehicles)	OWNER OF PROPERTY (include city agency, where applicable)

## NYPD VEHICLE IS INVOLVED:

Police Vehicle-Operator's First Name	Last Name	Rank	Shield No.	Tax ID. No.	Command
Make of Vehicle	Year	Type of Vehicle	Plate No.	Dept. Vehicle No.	Assigned To What Command
Equipment in Use At Time of Accident					
<input type="checkbox"/> Siren <input type="checkbox"/> Horn <input type="checkbox"/> Turret Light <input type="checkbox"/> 4-Way Flasher <input type="checkbox"/> High-Level Warning Lights <input type="checkbox"/> Traffic Cones <input type="checkbox"/> Headlights					

## ACTIONS OF POLICE VEHICLE

<input type="checkbox"/> Responding to Code Signal	<input type="checkbox"/> Complying with Station House Directive
<input type="checkbox"/> Pursuing Violator	<input type="checkbox"/> Routine Patrol
<input type="checkbox"/> Other (Describe)	

**Exhibit B**

TODAY'S DATE: 5/25/2007 TIME: 13:07:90  
\*RECORD EXPANSION FOR: RODRIGUEZ, LEONARDO

RODRIGUEZ, LEONARDO  
414 E 204TH ST 4J  
BRONX NY 10467

CLIENT ID#: 230374123  
DOB: 01/01/1981 SEX: M  
HEIGHT: 5-10 EYE COLOR: BROWN  
COUNTY: BRON  
MI #: R15161 95651 360656-81

LICENSE CLASS: \*D\*  
COMMERCIAL STATUS: SURRENDERED  
PERMIT CLASS: B  
APPLICATION DATE: 03/01/2004  
ENDORSEMENTS: PASSENGER  
RESTRICTIONS: NONE  
PERMIT CLASS: M  
APPLICATION DATE: 03/28/2000  
ENDORSEMENTS: NONE  
RESTRICTIONS: NONE

STATUS: SURRENDERED EXPIRATION: 01/01/2010

STATUS: SURRENDERED EXPIRATION: 03/01/2005

STATUS: SURRENDERED EXPIRATION: 03/28/2001

\*\*\* ENTER NEXT FUNCTION CODE NEXT \*\*\* ( RECORD CONTINUED ON FOLLOWING PAGE )



\*\*\*\*\* ACTIVITY \*\*\*\*\*  
DOCUMENT SURRENDERED ON: 04/09/2004 TO FL  
  
\*\*\*\*\* CONVICTIONS/BAIL FORFEITURES \*\*\*\*\*  
CONVICTION: FLD TO STOP-SCHL BUS  
VIOLATION: 09/12/2003 CONVICTED ON: 04/23/2004  
LOCATION: BRONX COUNTY, ADMINISTRATIVE ADJUDICATION  
PENALTY: FINE- \$250 POINTS: 5  
COMM VEH: UNKNOWN HAZMAT: UNKNOWN  
  
\*\*\* END OF RECORD \*\*\*

**JORDAN SCHIFF**  
**Notary Public, State Of New York**  
**No. 02SC5082029**  
**Qualified In New York County**  
**Commission Expires 7/14/2009**

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Defendants.  
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Federal Express Corporation and  
Leonardo Rodriguez  
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15<sup>th</sup> Floor  
New York, NY 100017  
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